IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

MFA.No. 329 of 1997()

OP(MV).732/1988 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR.

.....

APPELLANT: 3RD RESPONDENT

UNITED INDIA INSURANCE COMPANY LIMITED,
REPRESENTED BY ITS MANAGER, M.T.P.C.
OFFICE, M.G.ROAD, COCHIN - 16.

BY ADV. SRI.P.JAYASANKAR

RESPONDENTS: PETITIONERS & RESPONDENTS 1 & 2:

---

* 1. KUNJALA, W/O.PYLOTH, KONIKKARA HOUSE,
MARATHAKKARA

(THE FIRST RESPONDENT IS DELETED FROM PARTY ARRAY
AT THE RISK OF THE APPELLANT VIDE ORDER DT. 27.2.2004
IN I.A.NO.630/2004)

2. MARY, D/O.PYLOTH, DO. DO.

3. SALEENA, .DO. .DO.

4. ELSY, .DO. .DO.

5. JOSE, S/O. PYLOTH, DO. DO.

6. KATHREENA, D/O.PYLOTH, DO. DO.

7. LOYIS, S/O.PYLOTH, DO. DO.

8. PAUL, S/O.PYLOTH, DO. DO.

9. PHILOMINA, W/O.PORINJU, DO. DO.

10. FIJO, D/O.PORINJU, MINOR, DO. DO.

11. RIJO PAUL, D/O.PORINJU, MINOR, DO. DO.

12. K.M.SHAMSUDEEN, S/O.MARAKKARUKUTTY,
NOORJAHAN MANZIL, ALUVA, KARAMALLOOR.

13. BABU, S/O.KUNHAN ALIAS ITTIKKURU,
PULIKKOTTIL HOUSE, PAZHANJI VILLAGE.

BY ADV. SRI.P.V.CHANDRA MOHAN
SRI.A.ANTONY
SMT.LEELAMMA ANTONY
SRI.MATHEW SKARIA
SRI.R.BINDU (SASTHAMANGALAM)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.329 of 1997

Dated this the 16th August, 2007.

J U D G M E N T

The 3rd respondent, Insurer, in O.P.(M.V.) No.732/1988, on the file of the Motor Accidents Claims Tribunal, Thrissur, is the appellant. This appeal is filed against an award passed by the Tribunal, by which it had awarded a compensation in terms of Section 140 of the Motor Vehicles Act.

2. The short facts necessary for the disposal of the appeal are as follows. First respondent is the widow and respondents 2 to 8 are the children of deceased Pyloth. Nineth respondent is the widow and respondents 10 and 11 are the children of deceased Porinju, who was also a son of Pyloth. Pyloth met with a road traffic accident involving a motor cycle, which 13th respondent was riding. 12th respondent was the owner. It was alleged that the accident occurred due to the negligence of the rider of the motor cycle. The owner of the vehicle remained ex parte. The driver of the vehicle, 13th respondent herein, filed a counter disputing the negligence. The quantum of compensation claimed was denied. It was contented that

the vehicle was covered with a valid policy of insurance issued by the appellant. The appellant also disputed the negligence alleged against the second respondent but admitted the existence of a valid policy. The Tribunal found that the accident occurred due to the negligence of the rider of the motor cycle. Regarding the quantum of compensation, counsel appearing for the claimants submitted that they need be awarded only the minimum amount of compensation prescribed under Section 140 (2) of the Motor Vehicles Act, 1988, as amended by Motor Vehicles Act, 1994. It was contented that the minimum compensation payable for the death is Rs.50,000/= under the amended Act, and the award need to be passed only for that amount. The Tribunal passed an award authorising the respondents to recover an amount of Rs.50,000/=. The appellant was directed to pay that amount. Challenging that direction, this appeal is filed.

2. The learned counsel appearing for the appellant submitted that under Section 92 A, sub-section (2) of the Motor Vehicles Act, the quantum of compensation to be awarded in the case of death under 'no fault liability' was Rs.15,000/= and for permanent disablement, the compensation was Rs.7500/=. Subsequently, that provisions were amended and compensation was enhanced to

Rs.25,000/= and Rs.12,500/= for death and disablement, and subsequently to Rs.50,000/= and Rs.25,000/= respectively with effect from 14.11.1994. It is argued that at the relevant time, the provisions contained in Section 92A of the Motor Vehicles Act, 1939, was in force and hence, the respondents can be awarded a compensation of Rs.15,000/= under Section 92A of the Motor Vehicles Act, 1939. It is also argued that the principles laid down in the decision relied on by the court below was over ruled in **Oriental Insurance Co. Ltd. v. Sheela Ratnan** (1996(2) KLT 695 (F.B), in which it was held that relevant date for fixing the quantum of compensation under 'no fault liability' is the date of accident. So, the decision of the Tribunal to award compensation amount of Rs.50,000/= is illegal and unsustainable.

3. Considering the facts and circumstances of the case, I am of the view that it is only just and proper to give a reasonable opportunity to applicants to adduce evidence for refixing the compensation. For that purpose, the case has to go back.

4. In the result, appeal is allowed. The impugned order is set aside. O.P.(M.V.) No.732/1988 is remanded to the Motor Accidents Claims Tribunal, Thrissur, for fresh disposal, in accordance with law, after giving a reasonable opportunity to both sides, to adduce evidence.

Parties shall appear before the Tribunal on 27.9.2007.

Being an old case, the Tribunal shall make every endeavor to dispose of the case, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 329 of 1997

J U D G M E N T

Dated:16th August, 2007.